



State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES

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Anthony & Carleen Rizzo
d/b/a North of the Border Fuel
3 Lafayette Road
Seabrook, NH 03874

**NOTICE OF PROPOSED
ADMINISTRATIVE FINE
AND HEARING
No. AF 01-135**

October 12, 2001

I. Introduction

This Notice of Proposed Administrative Fine and Hearing is issued by the Department of Environmental Services, Air Resources Division ("the Division") to Anthony & Carleen Rizzo pursuant to RSA 125-C:15. The Division is proposing that fines totaling \$2,905 be imposed against Anthony & Carleen Rizzo for the violations alleged below. **This notice contains important procedural information. Please read the entire notice carefully.**

II. Parties

1. The Department of Environmental Services, Air Resources Division, is an administrative agency of the State of New Hampshire, having its principal office at 6 Hazen Drive, Concord, NH.
2. Anthony & Carleen Rizzo are individuals having a mailing address of 3 Lafayette Road, Seabrook, NH 03874.

III. Summary of Facts and Law Supporting Claims

1. RSA 125-C authorizes the Department of Environmental Services ("DES") to regulate sources of air pollution. RSA 125-C:4 authorizes the Commissioner of DES to adopt rules relative to the prevention, control, abatement, and limitation of air pollution in New Hampshire. Pursuant to this authority, the Commissioner has adopted NH Admin. Rules Env-A 100 *et seq.*
2. RSA 125-C:15,I-b(b) authorizes the Commissioner to impose administrative fines of up to \$2,000 per offense for violations of any rule adopted pursuant to RSA 125-C.
3. Env-A 1205.19 and .20 require gasoline dispensing facilities in Hillsborough, Merrimack, Rockingham, and Strafford counties which meet certain throughput criteria to install a California Air Resources Board ("CARB")-certified Stage II vapor recovery system.
4. Anthony and Carleen Rizzo are owners of a gasoline dispensing facility doing business as North of the Border Fuel, located at 3 Lafayette Road, Seabrook, Rockingham County, NH 03874 ("the Facility"). The Facility meets the throughput requirements specified in Env-A 1205.19

5. On August 29, 1996, DES issued Letter of Deficiency No. ARD 96-030 ("LOD") to the Facility for failing to comply with the requirements of Env-A 1205. Specifically, the Facility was cited for not having the required pressure vacuum vent caps installed on the gasoline tank vents, for not having installed Stage II vapor recovery controls on one of its three gasoline dispensers, and for not having tested the Stage II vapor recovery systems.
6. On February 6, 1997, the Air Resources Division ("the Division") issued a Notice of Proposed Administrative Fine and Hearing (No. AF 97-002) to the Facility for failing to install Stage II vapor recovery controls on one of the three gasoline dispensers, and for failing to test and certify the existing Stage II vapor recovery system.
7. On May 29, 1997, a Motion to Accept Settlement ("the Agreement") signed by all parties was granted by the Commissioner. The Agreement required the installation of Stage II vapor recovery controls by March 11, 1997, the successful performance of a stage II vapor recovery test by March 26, 1997, and the payment of an administrative fine of \$905.00.
8. The Facility complied with all of the terms and conditions of the Agreement. On February 25, 1998, DES issued Certificate of Compliance No. II-980101 ("the Certificate") to the Facility.
9. Env-A 1205.27 states that a Stage II certificate of compliance shall be valid for no more than three years.
10. The Certificate expired on March 1, 2000, approximately three years after the successful completion of the Stage II vapor recovery test.
11. Env-A 1205.24(a)(2) requires the owner or operator of an applicable gasoline dispensing facility to re-test a Stage II system within 90 days prior to the expiration date of any certification of compliance issued by the Division to the owner.
12. Env-A 1205.28(b) requires the owner or operator of an applicable gasoline dispensing facility to pay a non-refundable renewal fee of \$200 to the Division on or before the expiration date of the certificate of compliance.
13. Env-A 1205.23 requires the owner or operator of an applicable gasoline dispensing facility to notify the Division in writing at least 5 working days prior to any proposed testing of the date and time such testing will occur and the name of the person who is responsible for such testing.
14. On January 18, 2001, Division personnel contacted Ms. Carleen Rizzo by telephone to notify her that the Facility's Stage II vapor recovery certification expired on March 1, 2000, that the equipment was required to be re-tested, and that a \$200 renewal fee was due to the Division along with a notification form. A copy of the blank notification form was faxed to Ms. Rizzo.
15. On July 10, 2001, Division personnel contacted Mr. Anthony Rizzo by telephone to notify him that Stage II vapor recovery equipment at the Facility was required to be re-tested, and that a \$200 renewal fee was due to the Division along with a notification form. A copy of the blank notification form was faxed to Mr. Rizzo.

16. On July 11, 2001, the Facility submitted to the Division the non-refundable renewal fee of \$200 as required by Env-A 1205.28(b) and the written notification of testing as required by Env A 1205.23. The re-test of the Stage II vapor recovery equipment required by Env-A 1205.24(a)(2) is currently scheduled to occur in October of 2001.

IV. Violations Alleged and Proposed Administrative Fines

1. North of the Border Fuel has violated Env-A 1205.24(a)(2) by failing to re-test the Stage II vapor recovery system within 90 days prior to the expiration date of the Certificate. The Division has determined the Violation 1. identified above to be a major deviation from the requirements with moderate potential for harm. RSA 125-C:15,I-b(b) specifies a fine range of between \$1,251 and \$1,750. Based upon the Division's assessment of the environmental impact of the violations and the Rizzo's compliance history, the Division is seeking a fine of \$1,750 for this violation.

2. North of the Border Fuel has violated Env-A 1205.28(b) by failing to pay the \$200.00 renewal fee required on or before the expiration date of the Certificate. The Division has determined the Violation 2. identified above to be a moderate deviation from the requirements with minor potential for harm. RSA 125-C:15,I-b(b) specifies a fine range of between \$601 and \$1,250. Based upon the Division's assessment of the willfulness of the violation and the Rizzo's compliance history, the Division is seeking a fine of \$1,155 for this violation.

The total fine being sought is \$2,905.

V Required Response, Opportunity for Hearing

Pursuant to Env-C 601.06, you are required to respond to this notice. Please respond no later than November 8 , 2001 using the enclosed colored form.

You have the right to a hearing to contest the Division's allegations before the fine is imposed. If you desire a hearing on this matter please indicate accordingly using the enclosed colored form.

1. If you would like to have a hearing, please sign the appearance (upper portion) and return it to James Ballentine, DES Enforcement Paralegal, as noted on the form. A Notice of Scheduled Hearing will be issued to you.
2. If you choose to waive the hearing and pay the proposed fine, please sign the waiver (lower portion) and return it **with payment of the fine** to Mr. Ballentine.
3. If you wish to discuss the possibility of settling the case, please sign the appearance and return it to Mr. Ballentine **and** call Mr. Ballentine to indicate your interest in settling.

You are not required to be represented by an attorney. If you choose to be represented by an attorney, the attorney must file an appearance and, if a hearing is held, submit proposed findings of fact to the person conducting the hearing.

VI. Determination of Liability for Administrative Fines

Pursuant to Env-C 601.09, in order for any fine to be imposed after a hearing, the Division must prove, by a preponderance of the evidence, that you committed the violations alleged and that the total amount of fines sought is the appropriate amount under the applicable statute and rules. Proving something by a preponderance of the evidence means that it is **more likely than not** that the thing sought to be proved is true.

If the Division proves that you committed the violations and that the total amount of fines sought is the appropriate amount under the applicable statute and rules, then the fine sought will be imposed, subject to the following:

- * Pursuant to Env-C 601.09(c), the fine will be **reduced by 10%** for each of the circumstances listed below **that you prove, by a preponderance of the evidence, applies in this case:**

The violation was a one-time or non-continuing violation, **and** you did not know about the requirement when the violation occurred, **and** the violation has not continued or reoccurred as of the time of the hearing, **and** any environmental harm or threat of harm has been corrected, **and** you did not benefit financially, whether directly or indirectly, from the violation.

- 2 At the time the violation was committed, you were making a good faith effort to comply with the requirement that was violated.
- 3 You have no history of non-compliance with the statutes or rules implemented by DES or with any permit issued by DES or contract entered into with DES.
- 4 Other information exists which is favorable to your case which was not known to the Division at the time the fine was proposed.

*****IMPORTANT NOTICE*****

An administrative fine hearing is a formal hearing. Any hearing will be tape recorded, and all witnesses will testify under oath or affirmation. At the hearing, the Division will present testimony and evidence to try to prove that you committed the violation(s) alleged above and that the fine(s) should be imposed. **The hearing is your opportunity to present testimony and evidence that you did not commit the violation(s) and/or that the fine(s) should not be imposed, or that the fine(s) sought should be reduced.** If you have any evidence, such as photographs, business records or other documents, that you believe show that you did not commit the violation(s) or that otherwise support your position, you should bring the evidence to the hearing. You may also bring witnesses (other people) to the hearing to testify on your behalf.

If you wish to have an informal meeting to discuss the issues, you must contact Mr. Ballentine at (603) 271-6072 to request a prehearing conference.

Information regarding this proposed fine may be made available to the public via the DES Web page (www.state.nh.us.des). If you have any questions about this matter, please contact James Ballentine, DES Enforcement Paralegal, at (603) 271-6072.


Kenneth Colburn, Director
Air Resources Division

Enclosure (*NHDES Fact Sheet #CO-2 2000*)

cc: Gretchen C. Rule, Esq., DES Enforcement Coordinator
Susan Weiss Alexant, Esq., DES Hearings & Rules Attorney
Public Information Officer, DES PIP Office
T. McCusker, EPA Region I
O. Carter, Chairman of Selectmen, Town of Seabrook
ARD Enforcement File